

REMARKS

This patent application presently includes claims 1-52 and 58-66, all of which stand rejected. The claims are amended to define the applicant's invention more clearly, and all rejections are respectfully traversed.

Claims of 1-9, 21, 23-28, 34-40, 46, 48-52, 58-66 were rejected as anticipated by Gever et al. International Publication Number WO 97/35280. This rejection is respectfully traversed. Gever does not teach or suggest the present invention.

Gever relates to programmable computer graphic objects, which are referred to as a "Smart Object." As explained in Gever, computer animation systems and methods are well known. Typically, an animation system or method requires the use of a rendering program which creates images based upon received information. Gever is no different. As explained beginning at page 6, line 3 of Gever, the Smart Object data is read by a program that generates an animated image, including the Smart Object. Gever refers to this program as the "Scene Manager." The Scene Manager software is either a browser plug-in or a stand alone application (page 24 lines 19-23). In either case, it must be installed by the user (page 6, lines 3-4). In other words, the user's computer must be pre-programmed to produce an animated graphic sequence (page 4, lines 34-35).

Although online advertising makes it possible for so much of the World Wide Web to remain free of charge, users invariably consider it to be a nuisance. It is therefore unlikely that a user would willingly install software to make it possible for animated advertising to be produced on his computer. Any system that requires the user to install such software in order to provide him with animated advertising is untenable.

In contrast to Gever, the present invention makes use of only software technology already available on the user's computer. Animated character generating signals sent to the user are constituted on the basis of what software technology he has available on his computer (page 2, lines 14-15). At page 4, line 24 through page 5, line 10 of the application, it is explained that the preferred animation software is Macromedia Flash, including MP3 sound. However, disclosed as an alternate mechanism for the animation is an animated GIF object with a WAV object for sound. At that time, this technology would have been present on most computers accessing the World Wide Web. Today, it would be present on virtually all of them. Thus, the present invention does not rely upon the need to use a plug-in or program (executable code) which is dedicated to the production of animated characters and would need to be installed. As

explained above, if such dedicated executable code were necessary, it would not present a workable solution for animating characters for online advertising.

Turning now to the claims, all of the claims include the feature that the animated character is generated without making use of "executable code present before its introduction and dedicated to its production." For the reasons explained above, this feature makes the claims patentable over Gever.

For the Examiner's information, the undersigned is enclosing a copy of an article from the February 24, 2005 edition of the New York Times, entitled "Floater Ads, The Cousins to Pop-Ups, Evade the Blockers." Advertisements of the type contemplated by the present invention have come to be known as "floater ads." This article attests to the uniqueness, utility and commercial success of those ads. It states that they have been around since 2001, the time when they were first introduced by the owner of the present patent application.

The present patent application was made special owing to the existence of a potential infringer. This article demonstrates that infringement is continuing and increasing and it underscores the need for the grant of a patent at the earliest possible date.

For the above reasons, all of the claims subject to the present rejection distinguish patentable over Gever and should be allowed thereover.

Claims 10-12, 14-20, 29-32, 41-45, and 47 were rejected as obvious over Gever in view of Gever et al. US patent number 6,313,835 (Gever '835). This rejection is respectfully traversed. Neither of these references, nor the combination thereof renders these claims obvious.

Gever' 835 provides no disclosure which would alleviate the shortcomings of Gever as a reference. Accordingly, the combination of the two references would still not render claims 1-9, 21, 23-28, 34-40, 46, 48-52 or 58-66 unpatentable. The present claims, which incorporate the same distinguishing feature, would therefore also be patentable over the combination of references.

It should also be noted that Gever' 835 teaches away from the present invention in a significant way, in that it contemplates that the user be able to exercise substantial control over the animated character. In accordance with all the claims of the present patent application, the user should not be able to exercise control over the character. It should be noted that "while the application program is running" was deleted from the claims as a limitation applying to the absence of control by the user over the character. This is viewed as an unnecessary limitation and was added to only to address the contingency that the user was exercising control over the

character when he turned off the computer. This is believed to be a trivial example, as those killed in the art would be well aware that the invention would not be intended to apply to a computer that is turned off.

For all of the above reasons, Claims 10-12, 14-20, 29 at 232, 41-45, and 47 should be allowed.

Claims 13 and 22 were rejected as obvious over Gever in view of Middleton et al. International Publication No. WO99/13 423, in the case of claim 13, with the addition of Gever '835. Middleton was cited for its disclosure that the effectiveness of web advertising could be tracked in terms of the number of impressions and duration of an advertisement. Its inclusion would not cure any of the defects noted in the preceding rejections. Claims 13 and 22 are therefore believed to be allowable based upon their dependence from an allowable claim.

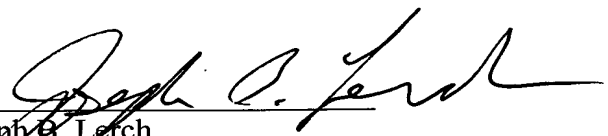
Applicant's attorney has made every effort to place this patent application in condition for allowance. It is therefore earnestly requested that this patent application, as a whole, receive favorable reconsideration and that all of the claims be allowed as presently constituted.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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Floater Ads, the Cousins to Pop-Ups, Evade the Blockers

By JONATHAN MILLER

IF you happened upon nj.com in the last month, you might have noticed a clucking penguin waddling across the computer screen, stumbling over text as it promoted a local utility company.

On a cricket league chat board in New Zealand, exasperated users have been deluged with floating squares that try to interest them in mattresses, dating services and officially licensed trinkets from the "Lord of the Rings" film trilogy.

On the Web, the floater's time has come.

Not to be confused with pop-up ads, which open new windows and clutter virtual desktops, these floaters, or overlays, or popovers (no one can agree on a name), can evade the pop-up blockers that many Web browsers have incorporated.

In the last year, according to Nielsen/NetRatings, which collects and analyzes data on Web advertising, the frequency of these ads has risen markedly, by almost 32 percent from December 2003 to December 2004, while pop-ups in that period declined by 41 percent.

The floater ads, often using a computer's Macromedia Flash Player to run, overlay the content of the page rather than spawning new windows. They have been around since 2001, but their rise has been abetted by the growing use of high-speed Internet connections, allowing them to play with greater ease.

Floaters are one example of a variety of online ads known in the industry as rich media. Some variants include banner ads that expand to show graphics and streaming video when the cursor is waved over them; a tamer version packs the video and graphics into a static, or polite, banner. All have a common characteristic: they cannot be categorically blocked by existing technology.

To many, they are just as irritating as pop-up ads, if not more so. On the New Zealand cricket chat board, one user declared, "This form of advertising is without a doubt the most ridiculous and offensive form I have ever come across."

But as with pop-ups (before pop-up blockers), their appeal to advertisers is simple: they get people to click, usually transporting them to the advertiser's site. While static Web ads typically have "click through" rates of 0.5 percent of viewers, according to numerous industry studies, the rate for pop-ups and floaters is 3 percent to 5 percent, though some studies suggest that many of those clicks are attempts to get rid of the ad.

According to Nielsen/NetRatings, the sites on which such ads were most common in the year ended in December were three Microsoft sites -- www.msn.com, www.msnnbc.com and Hotmail -- followed by espn.com and www.yahoo.com.

Although most advertisers and the sites where the ads appear seem happy with the use of the floater ads, recent research suggests problems. A study of 2,500 British Internet users released last month by OMD UK found that just as many Web users (44 percent) were annoyed with floaters as they were with pop-ups. Many major sites, like nytimes.com and www.msn.com, limit the number of times a person is shown such an ad. (At nytimes.com, the limit is once per visit to the site.)

"We want to do something that's informative and entertaining as opposed to being annoying," said Joanne Bradford, vice president and chief media revenue officer for msn.com. "That's our guiding principle." To that end, the company introduced on Feb. 1 a design that limited the number of ads on the main page. (Ms. Bradford would not say by how much.) The action, she noted, did prompt "a little bit of squawking" from advertisers.

Still, of the 122 sites that DoubleClick, an Internet marketing company, counts as users of its advertising services, only 16 percent limit the number of times a user is exposed to an ad, according to a recent report by the company. Some are trying to figure out other ways to stop the onslaught. Mozilla, designer of the popular (and free) Web browser Firefox, which offers a pop-up blocker, is trying to block floater ads as well, but has so far been unsuccessful, said Chris Hofmann, director of engineering for the Mozilla Foundation. "It really is an arms race," he said.

Jarvis Coffin, chief executive of Burst Media, a company that sells advertising for more than 2,000 Web sites, said that even though he is a fan of the "rich media" ads, he warns that advertisers should understand that they cannot deluge people with the technology without consequence. "Just because you can do it doesn't make it a smart thing to do," he said.

Correction: February 26, 2005, Saturday An article in Circuits on Thursday about a growing form of online advertising known as the floater misstated the results of a study of advertising practices of clients of the Internet marketing company Double8Click. The study found that 16 percent of ads shown were subject to limits on the number of times an individual user saw them; such limits were not applied by 16 percent of sites. In addition, the article misstated the number of clients of DoubleClick's ad services. There are more than 1,000, not 122.